

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FUND TEXAS CHOICE, et al.,

Plaintiffs,

v.

KEN PAXTON, in this official capacity of  
Attorney General, et al.,

Defendants.

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1:22-CV-859-RP

**ORDER**

Before the Court is Plaintiffs Fund Texas Choice, The North Texas Equal Access Fund, The Lilith Fund for Reproductive Equity, Frontera Fund, The Afiya Center, West Fund, Jane’s Due Process, CASN, and Dr. Ghazaleh Moayed, DO, MPH, FACOG’s (“Plaintiffs”) Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum of Law in Support. (Dkt. 6). Having reviewed the motion, the Court finds that Plaintiffs’ request for an ex parte TRO should be denied.

A TRO is “a highly accelerated and temporary form of preliminary injunctive relief, which may be granted without notice to the opposing party or parties.” *Cotton v. Texas Express Pipeline, LLC*, 2017 WL 2999430, at \*1 (W.D. Tex. Jan. 10, 2017). But under Federal Rule of Civil Procedure 65, a court may issue a TRO without written or oral notice to the adverse party only if both of the following requirements are met:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). Plaintiffs do not certify in writing any efforts made to give notice to Defendants or why notice should not be required. (*See* Dkt. 6). Thus, Plaintiffs have not satisfied

both requirements for the issuance of an ex parte TRO under Rule 65(b)(1). *See CompuCom Sys., Inc. v. WJ Glob., LLC*, No. 3:14-CV-3625-L, 2014 WL 5032747, at \*2 (N.D. Tex. Oct. 8, 2014) (denying Plaintiff's request for ex parte relief on same grounds); *Cotton*, 2017 WL 2999430, at \*2 (W.D. Tex. Jan. 10, 2017) (denying Plaintiff's request for ex parte relief for failure to satisfy both requirements of Rule 65(b)).

Accordingly, **IT IS ORDERED** that Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, (Dkt. 6), is **DENIED IN PART**. Specifically, Plaintiffs' request for a TRO is denied. The Court will consider Plaintiffs' request for a preliminary injunction once Defendants have been served and given the opportunity to respond.

**SIGNED** on August 24, 2022.

A handwritten signature in blue ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE